



*Connecticut Chapter  
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*Martin Mador, Legislative Chair*

Environment Committee  
January 31, 2011

Testimony In Favor of  
SB 60 AAC The Enforcement And Permitting Duties Of The Department  
Of Environmental Protection  
SB 834 AAC Municipal Open Space Priorities And Funding For The Purchase  
Of Such Properties  
HB 5202 AA Authorizing The Issuance Of Bonds For Farmland Preservation  
SB 831 AAC Municipal Liability For Recreational Activities On Certain Open Space Lands  
SB 59 AA Prohibiting The Sale Or Use Of Fishing Sinkers, Jigs  
And Tire Weights That Contain Lead

I am Martin Mador, 130 Highland Ave., Hamden, CT 06518. I am the volunteer Legislative Chair for the Sierra Club-Connecticut Chapter. I am also a director of Rivers Alliance and of the Quinnipiac River Watershed Association. I hold a Masters of Environmental Management degree from the Yale School of Forestry and Environmental Studies.

S. 831

Encouraging people to get outdoors and enjoy the natural world is a high priority. Outdoor recreation contributes to personal health and well-being; provides satisfaction for our genetically-driven biophilic need to connect with the natural world; contributes to the economy through sales of equipment and outings, and thus creates local jobs; and enhances awareness of natural places which helps preserve them.

Ensuring that town-owned open space is open for hiking, boating, cycling, and other "passive" recreation is the reason we are here today. State law has provided since 1971 that landowners who open their lands for recreation without charge are protected from liability for such use, except in the case of negligence. Town lands were included in this protection until a 3-2 state supreme court decision in 1996 reversed previous case law and stripped the immunity from towns on a narrow, technical, ruling involving the definition of "landowner". There was no finding that towns are not inherently eligible for the protection, only that the specific language of the Recreational Land Use Act did not include them. Subsequent legislative efforts to restore the immunity have failed because of the opposition of special interests.

So some towns have closed their open space lands, some are considering doing so, and all towns are paying a price. The MDC considered closing their lands following a recent \$3M judgment. It is even possible that open space purchased with state funding may be closed to the public. Because of this lack of immunity, the costs to municipalities include insurance premiums, jury awards, insurance deductibles, and litigation and attorney expenses.

The state itself, individuals, corporations, non-profits, land trusts, and others who allow recreational use without charge all receive immunity. Only the towns are left exposed. As a result, some portions of a trail may be covered while others of the same trail are not.

There is no question about the import of the 1996 Conway vs. Wilton decision in striking

towns from the law. Simply look at OLR reports 96-R-1130, 96-R-1163, 97-R-0715, 97-R-0608, and 2009-R-0236.

S. 831 restores the liability protections towns enjoyed until Conway. It simply provides the specific legislative language the court found lacking in the original law. It leaves in place the standard that such protections are forfeit if there is negligence on the part of the town, so there is an incentive for towns to maintain their lands.

The Sierra Club asks you to place the public interest above that of the special interests which have blocked this needed remedy for far too long, and pass this bill.

#### S. 834

This bill would establish the Community Green Fund through a conveyance fee on buyers of real estate to provide funding for open space acquisition and other public benefit uses. It is enabling legislation, allowing each town to establish its own fund only if it so wished. It is an equitable concept because the fee is paid by those buying property, i.e., by those who stand to benefit from enhancing the quality of life in their new town. The concept is proven: it has worked well in New York, Rhode Island, and Massachusetts.

Many grant programs, including those of the state, require matching funds. The Green Fund would provide that match, for towns which choose to make use of it.

Recognizing that there could be an unwanted impact on affordable housing and lower-income families, the bill exempts the first \$150,000 of the purchase price.

In this time when there is a recognized need to establish additional funding sources for towns, the Green Fund will provide an appropriate vehicle for towns electing to implement it. The Sierra Club strongly supports this bill.

#### S.60

It has been long recognized that the state DEP is critically underfunded, and has been for decades. Ours has one of the lowest funding levels of all comparable state agencies in the country. A campaign a decade ago to address the problem was titled "One Percent for the Environment". The funding level today is about one fifth of that: 0.2%.

Candidate Malloy, in his response to the Sierra Club's election endorsement questionnaire last fall, said "DEP, which is responsible for protection and enforcement, has been compromised by years of underfunding" and "As Governor, I'll work to ensure that DEP has the resources and support it needs".

The state DEP provides a wealth of necessary services for the state. These services discourage potential polluters from bad acts; provide for cleanup for what does happen at the polluter's expense rather than the public's; manage our natural resources; provide parks, open space and water based recreation. They contribute significantly to our quality of life, and to the health and safety of our world. Providing clear rules and guidelines enables business to understand its obligations, creates a level playing field, and saves money by preventing harm.

The agency has been harshly criticized lately for its past performance in the permitting process. Some criticism was appropriate and deserved, some confounded the meaning of the word "streamline" with "bypass". DEP responded, reviewed its procedures through the LEAN process, and provided for faster response times where possible. It still, however, faces a significant dearth of resources.

Environmental standards persist; they do not come and go. So the agency's work load

over time can only increase, as new standards continue to improve the quality of our world. Resources for our DEP, unfortunately, have not grown with the work load.

DEP, as an agency of the executive branch, must take direction from the Governor. We feel that necessary information on the state of agency resources and needs has not been adequately provided in the past. The Sierra Club praises the legislature's current efforts to monitor the agency's needs. DEP's Permitting Assessment Report of Sept. 30, 2010, in which the "DEP identified the need for an additional 53 program staff, five legal staff and six information technology staff to consistently meet the time frame goals outlined in Public Act 10-158" was a good first step. S. 60 is a welcome continuation. Whether or not the current economic situation provides a funding level we would like to see, at least we should know what we have available and what is needed to meet the agency's duties and responsibilities.

#### H. 5202

The Sierra Club endorses efforts to support farming activities in the state. Farmland preservation is important. Agriculture provides open space, helps to restrain sprawl, provides jobs, strengthens the local economy (\$3.5 billion in the state), and in many ways enhances our quality of life. And we must remember the words of the most effective advocacy slogan ever to appear on a bumper, "No Farms No Food".

The state has a longstanding policy of keeping farms in operation through funding the purchase of development rights (PDR). This is an inexpensive way of keeping farms in operation—far cheaper than purchase of ownership of the land (the fee). The time to do this is when land values are depressed, as they are now. This bill will would maintain funding for PDR at the \$10M per year level.

Sierra strongly recommends passage of the bill and eventual acceptance by the Bond Commission, even in this troubled economy.

#### S. 59

Lead has been long recognized as a significant biological hazard. We have been gradually eliminating exposure of both human and animal life to this toxic element. This legislature passed a bill just three years ago capping the allowable levels of lead in children's products (PA 08-106).

SB 59 takes a next step by banning lead in applications for which there are alternatives.

